ESTTA Tracking number: **ESTTA605260**

Filing date: **05/20/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059016
Party	Defendant Radius Track Corporation
Correspondence Address	RADIUS TRACK CORPORATION 9320 EVERGREEN BOULEVARD NORTHWEST, SUITE G COON RAPIDS, MN 55433 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Mark J. Burns
Filer's e-mail	haugenmail@haugenlaw.com
Signature	/Mark J. Burns/
Date	05/20/2014
Attachments	Registrant's Motion to Dismiss.pdf(562334 bytes) Exhibit A.pdf(772483 bytes) Exhibit B.pdf(395059 bytes) Exhibit C.pdf(153680 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of U.S. Trademark Registration No. 2,215,593
For the mark: RADIUS TRACK
Date registered on Supplemental Register: December 29, 1998

DURAFRAME, LLC,

Petitioner,

Cancellation No.: 92059016

v.

RADIUS TRACK CORPORATION,

Registrant.

REGISTRANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Registrant, Radius Track Corporation (hereinafter "Radius Track" or "Registrant") through its attorneys hereby moves the Board pursuant to 37 CFR §2.116(a) and Federal Rules of Civil Procedure 12(b)(6) to dismiss Duraframe, LLC's (hereinafter "Duraframe" or "Petitioner") claims of descriptiveness and void registration, which are styled as Counts III and IV of Duraframe's Petition to Cancel (hereinafter "Petition").

The instant motion to dismiss concerns two of the three purported bases for cancellation of Registrant's registered trademark RADIUS TRACK, U.S. Reg. 2,215,593, (hereinafter the "Registration") registered on March 13, 1998, and is based upon the following Brief in Support of Registrant's Motion.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of U.S. Trademark Registration No. 2,215,593
For the mark: RADIUS TRACK
Date registered on Supplemental Register: December 29, 1998

DURAFRAME, LLC,

Petitioner,

Cancellation No.: 92059016

v.

RADIUS TRACK CORPORATION,

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REGISTRANT'S BRIEF SUPPORTING ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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I. Introduction

The RADIUS TRACK mark registered on the Supplemental Register on March 13, 1998. The registration properly asserts a date of first use in commerce of January 15, 1997. Since that time, Registrant has continuously used the registered mark RADIUS TRACK in connection with its metal framing member products.

Duraframe files the instant Petition in response to Registrant's notification requesting the cessation of its improper use of the RADIUS TRACK mark in association with products that are competitive with those sold by Registrant under its RADIUS TRACK mark. The Petition alleges three bases for cancellation of the Registration. The instant motion addresses two of the alleged bases for cancellation of the Registration.

In one section of the Petition, styled as Count IV, Duraframe apparently asserts that the Registration, which was registered on the Supplemental Register, should be cancelled by virtue of Petitioner's assertion that the mark is "merely descriptive of the goods". See ¶¶ 28-33 of the Petition. Such a claim, however, is improper under 15 U.S.C. §1091(a), pertaining to registrations on the Supplemental Register. Descriptiveness is not a permitted basis for cancelling a registration on the Supplemental Register, and as such Count IV of the Petition fails to state a claim upon which relief may be granted.

In the section of the Petition styled as Count III, Petitioner alleges that the Registration is void as it allegedly was "effectively abandoned and should not have proceeded to registration". See ¶¶ 17-27 of the Petition. Such a claim, however, is improper. 37 CFR §2.65(b) provides for trademark examiner discretion in maintaining the pendency of the trademark application. The prosecution history of the Registration demonstrates such permitted discretion. Count III of the Petition fails to account for 37 CFR §2.65(b), as well as the examination guidelines of the

Trademark Manual of Examining Procedure (TMEP), and therefore fails to state a claim upon which relief may be granted.

The remaining basis for cancellation of the Registration, an assertion that the mark at issue is generic, is fully denied in Registrant's concurrently filed Answer to the Petition. This Motion is brought pursuant to Trademark Trial and Appeal Board Manual of Procedure (TBMP) §503, and its filing tolls the time for the filing of Registrant's Answer relevant to Counts III and IV of the subject Petition. See TBMP §503.01. Registrant concurrently files its Answer to the portion of this proceeding seeking cancellation of Registrant's mark under a claim that it is generic, as provided for in TBMP §503.01. Given the dispositive nature of the instant Motion, Registrant anticipates that proceedings in this matter will be suspended pending determination of the issues raised by it.

II. Argument

A. Under Rule 12(b)(6) the Board should dismiss Petitioner's claims that the mark is merely descriptive and that the registration is void.

Among its allegations, Counts III and IV of Duraframe's Petition fail to state a claim upon which relief can be granted. Accordingly, the Board should dismiss Counts III and IV under Rule 12(b)(6).

1. Motion to dismiss standard

As set forth in 37 CFR §2.116(a), "procedure and practice in *inter partes* proceedings shall be governed by the Federal Rules of Civil Procedure." Among the motions available in proceedings before the Board, a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted is specifically authorized at TBMP §503. This type of motion is to be filed before, or concurrently with, the movant's

Answer. See TBMP §503.01. The purpose of a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal theory of the allegations set forth in the complaint to allow the Board to eliminate allegations that are fatally flawed in their legal premises and destined to fail, and thus to spare litigants the burdens of unnecessary pretrial and trial activity. See TBMP §503.02; Bayer Consumer Care AG v. Belmora LLC, 90 USPQ2d 1587, 1590 (TTAB 2009); Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc., 988 F.2d. 1157, 1160 (Fed. Cir. 1993).

In order to state a claim upon which relief may be granted in an opposition or cancellation proceeding, a plaintiff must allege facts which, if proved, establish:

> (1) that it has standing to challenge the application or registration against which the complaint is directed; and
>
> (2) that there is a valid ground for opposing the application or seeking to cancel the registration in question.

Young v. AGB Corp, 152 F.3d. 1377, 1379 (Fed. Cir. 1998).

In this case, Petitioner has at least failed to establish valid grounds for cancelling the Registration under prong (2) of the Young test, at least as it pertains to Duraframe's allegations that the mark is "merely descriptive", and that the Registration is void. Even if Petitioner's standing to pursue the case is undisputed, a complaint will be dismissed under Rule 12(b)(6) if it is found to lack a valid ground for cancelling the registration in question. Intersat Corp. v. International Telecommunications Satellite Organization, 226 USPQ 154 (TTAB 1985); *see also* Springs Industries, Inc. v. Bumblebee Di Stefano Ottina & C.S.A.S., 222 USPQ 512 (TTAB 1984).

2. Petitioner's allegation that Registrant's mark is "merely descriptive of the goods" is not a valid ground for seeking to cancel the Registration from the Supplemental Register.

Registrant's RADIUS TRACK mark is registered on the Supplemental Register. Terms that are "capable of distinguishing Applicant's goods or services" through use and promotion may be registered on the Supplemental Register. See 15 U.S.C. §1091(a).

The Petitioner seeks cancellation of the Registration as a consequence of the mark allegedly being "merely descriptive of the goods". See Count IV, ¶¶ 28-33 of the Petition. The Lanham Act, as codified at Title 15 of the United States Code, sets forth the grounds for cancellation of a registration on the Supplemental Register, and may include any of subsections (a), (b), (c), (d), and (e)(3) of 15 U.S.C. §1052. See 15 U.S.C. §1091(a). Significantly, the "merely descriptive" ground of 15 U.S.C. §1052(e)(1) does not provide a basis for cancelling a registration on the Supplemental Register. RJ Reynolds Foods, Inc. v. Borden, Inc., 163 USPQ 300, 301 n.5 (TTAB 1969). Title 15 therefore makes clear that an allegation of "mere descriptiveness" of a mark is not an available ground for cancellation of a registration on the Supplemental Register.

In view of the above, Duraframe's asserted ground for cancellation of the Registration based upon the RADIUS TRACK mark allegedly being "merely descriptive of the goods" is invalid, and should therefore be dismissed under Rule 12(b)(6) and pursuant to TBMP §503 as failing to state a claim upon which relief may be granted.

3. Petitioner's contention that the Registration "should not have proceeded to registration" is not a valid ground for seeking to cancel the Registration.

The Registration issued on December 29, 1998, and is based on an application filed on June 17, 1997 (hereinafter the "Application"). The first (and only) office action in the Application was dated March 13, 1998 as a non-final action (hereinafter the "Office Action"). Review of the Application was conducted in 1998. The regulations governing the examination of the Application are therefore those which were in effect between March and December, 1998. Accordingly, the Trademark Manual of Examining Procedure, Second Edition, Revision 1.1 (August 1997) was in effect during the time that the Application was ender examination at the United States Patent and Trademark Office (hereinafter "USPTO").

The Office Action sets forth the standard statutory six month period for reply. See Exhibit A. Registrant timely filed a response to the Office Action on September 10, 1998 (hereinafter the "Response"). See Exhibit B. Registrant's timely submission on September 10, 1998 was responsive to the Office Action and included proposed amendments to the Application, arguments, and a supplemental declaration of use executed by the owner of the trademark.

The Petitioner asserts that the September 10, 1998 submission "was not a complete response", and that as such the Application was "effectively abandoned one day after the six month due date for response" pursuant to 37 CFR §2.65(a). See ¶¶ 20 and 24 of the Petition. This assertion is predicated upon an incomplete and incorrect interpretation of 37 CFR §2.65, and ignores the examination guidelines set forth in the TMEP. Petitioner relies heavily on subpart (a) of 37 CFR 2.65 in asserting that the Application "was effectively abandoned".[1] In fact, subsection (b) of 37 CFR 2.65 provides the statutory foundation for the examination

[1] Petitioner's purported reproduction of 37 CFR §2.65 at paragraph 22 of the Petition mis-states the statute by intermixing an excerpt from TMEP §718.03 (April, 2014).

guidelines expressed in the TMEP. At the time the Office Action issued and was responded to, in 1998, 37 CFR §2.65 stated as follows:

> Abandonment
>
> (a) If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed to have been abandoned. A timely petition to the Commissioner pursuant to §§2.63(b) and 2.146 is a response which avoids abandonment of an application.
>
> (b) When action by the applicant filed within the six-month response period is a bona fide attempt to advance the examination of the application and is substantially a complete response to the examiner's action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.
>
> (c) In an applicant in an application under section 1(b) if the Act fails to timely file a statement of use under §2.88, the application shall be deemed to be abandoned.

Petitioner apparently construes 37 CFR §2.65 to hold that anything less than a complete response to an action within six months results in a "technical" abandonment of the application, attached by operation of law. Such construction, however, overlooks the authority expressly granted to the USPTO under 37 CFR §2.65(b), in which "opportunity to explain and supply the omission may be given before the question of abandonment is considered." See 37 CFR §2.65(b). Such authority is expressed in the relevant sections of the TMEP, providing the examining attorney with the discretion to conclude whether abandonment under 37 CFR §2.65 is appropriate.

The examination of the Application was conducted within the guidelines of the then-current TMEP, Second Edition, Revision 1.1. The pertinent TMEP section of such

version setting forth examination guidelines under 37 CFR §2.65 for a timely filed, though allegedly incomplete response is as follows:[2]

> Abandonment *may* result when the applicant's response, although received within the period for response, is incomplete or insufficient and thus not responsive to the Office action.
>
> If the response is incomplete but is responsive in part to the preceding Office action, *it is in the examining attorney's province to evaluate whether there is sufficient compliance to justify considering it to be a proper response.* A mere inquiry, or communication on matter unrelated to the preceding Office action, does not constitute a proper response.
>
> In the case of an applicant who submits a partial response (*i.e.*, does not address one or more of the requirements or refusals made in the Office action), *the examining attorney has the discretion to continue action on the application* or to hold it abandoned for failure to respond completely. The latter procedure should be followed only in limited circumstances. For example, holding the application abandoned would be proper where the Examining Attorney has made the requirement clear, but it appears that the applicant has deliberately refused to respond. The examining attorney should notify the applicant that the application is being abandoned, informing the applicant of the specific reason. After mailing the Office action, with the six-month response clause omitted or crossed out, the examining attorney should abandon the application.
>
> Subsection (b) of 37 F.C.R. § 2.65 provides an exception to the requirement to "respond completely." Subsection (b) allows the examining attorney to give an applicant additional time to perfect the response under certain circumstances. The essential factors for the examining attorney to take into consideration are:
>
> (1) was a response filed within the six month period;
>
> (2) was the response a bona fide attempt to advance the examination;
>
> (3) was the response a substantially complete response to the examining attorney's action; and
>
> (4) was some matter or compliance inadvertently omitted.

---

[2] The applicable section of the current TMEP (April, 2014) is §718.03, which specifically addresses "Properly Signed but Incomplete Responses to Nonfinal Actions", as follows:

> When an applicant files an incomplete response to a nonfinal action (i.e., does not address one or more of the requirements or refusals made in the Office action), *the examining attorney should not hold the application abandoned* (emphasis added).

In this case, the Office Action was nonfinal, and the Response was properly signed.

> If the examining attorney decides that the response meets all four criteria, he or she should write an action indicating the inadvertent omission and giving the applicant 30 days, or to the end of the period set forth in the action, whichever is longer, to supply the omission. The examining attorney must ensure that the six-month response clause is omitted or crossed out.
>
> It is also within the discretion of the Examining Attorney simply to make final all refusals or requirements to which the applicant has not responded if the application is otherwise in condition for issuance of a final action. The latter course is preferable since it would avoid petitions to revive and thus shorten pendency.
>
> A written disagreement with the examining attorney's refusal or requirement is a complete response and thus the provisions of 37 C.F.R. § 2.65 are not in issue (emphasis added).

In this case, subsequent to the submission of the Response to the Office Action, the Examining Attorney contacted the Applicant's representative to address the sole remaining issue in the Application: a requirement that the Application be amended to the Supplemental Register. See Exhibit C. In doing so, the Examining Attorney was acting within his province to continue action on the Application pursuant to TMEP §1112.02(a), and the Application properly moved to registration on the Supplemental Register.

It is clear that TMEP §1112.02(a) expressly contradicts Petitioner's assertion of a "technical" abandonment. Instead, the controlling law expressly grants the Examining Attorney with the discretion to continue action on an application without a holding of abandonment, which is exactly what transpired in the Application.

Petitioner may not now attack the Registration under a theory that the Examining Attorney was mistaken in exercising his discretion to continue action on the Application. "Asserted error by an Examining Attorney is not a proper ground for opposing an application", nor is it a proper ground for seeking cancellation of an existing registration. Demon International LC v. William Lynch, 86 USPQ2d 1058, 1060 (TTAB 2008). A

claim by Petitioner that the Examining Attorney "made a mistake" by not holding the Application abandoned, is therefore not a valid ground to cancel the Registration.

Petitioner's attempt to cancel the Registration based upon the Examining Attorney's *proper actions* also subjects the claim under Count III of the Petition to dismissal for the very reason that the Examining Attorney's actions were just that: completely proper.

The allegations set forth under Count III of the Petition fail to establish a valid ground to cancel the Registration. Such claim should therefore be dismissed under Rule 12(b)(6) and pursuant to TBMP §503 as failing to state a claim upon which relief may be granted.

III. Conclusion

For the forgoing reasons, Registrant respectfully requests that the Board dismiss Counts III and IV of the Petition alleging that the Registration "was effectively abandoned and should not have proceeded to registration", and that "the mark is merely descriptive of the goods".

Respectfully submitted,

Date: May 20, 2014

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FAX: (612) 339-8200

Attorneys for Registrant,
Radius Track Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing REGISTRANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM was served on Woods, Oviatt, Gilman, LLP, c/o Katherine H. McGuire, 2 State Street, 700 Crossroads Building, Rochester, NY 14614, Attorney for Petitioner, via U.S. Mail, postage pre-paid on May 20, 2014.

Respectfully submitted,

Date: May 20, 2014

Mark J. Burns
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Attorneys for Registrant,
Radius Track Corporation

EXHIBIT A

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/315627	APPLICANT Radius Track Corporation
MARK RADIUS TRACK	
ADDRESS JOHN W ADAMS 401 SECOND AVE S STE 418 MINNEAPOLIS MN 55401-2304	ACTION NO. 01 MAILING DATE 03/13/98 REF. NO.

FORM PTO - 1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE

PAPER NO.

ADDRESS:
Assistant Commissioner
for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

Please provide in all correspondence:

1. Filing Date, serial number, mark and Applicant's name.
2. Mailing date of this Office action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and ZIP code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID *ABANDONMENT.*
For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/315627

The assigned examining attorney has reviewed the referenced application and determined the following.

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01. The applicant, however, must respond to the following.

The examining attorney refuses registration because the proposed mark is used solely as a trade name, and not as a trademark. Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127. *See In re Walker Process Equipment Inc.*, 233 F.2d 329, 110 USPQ 41 (CCPA 1956); *In re Letica Corp.*, 226 USPQ 276 (TTAB 1985); TMEP section 1202.02.

The examining attorney will reconsider this refusal if the applicant submits three specimens showing trademark use. The applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimens were in use at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.10.

In addition, The examining attorney refuses registration on the Principal Register because the proposed mark merely describes the goods. Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1); TMEP section 1209 *et seq.*

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry,* 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP section 1209.01(b). The applicant's mark is merely descriptive because it immediately identifies a characteristic and feature of the goods, i.e., they include a radius track. See the attached excerpts from the NEXIS/LEXIS database.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

1. The identification of goods is unacceptable as indefinite because it does not specify the composition of the goods. The applicant may adopt the following identification, if accurate: curved wall and ceiling frame members made of metal in Class 6; non-metal curved wall and ceiling frame members in Class 19. TMEP section 804.

If the applicant prosecutes this application as a combined, or multiple-class, application, the applicant must comply with each of the following:

(1) The applicant must submit three specimens of use for each class; these specimens must be of a type which were in use at least as early as the filing date of the application. 37 C.F.R. Section 2.86(b).

(2) The applicant must state dates of first use and use in commerce for the mark in each class; these dates must be at least as early as the filing date of this application. 37 C.F.R. Sections 2.33(a)(1)(vii) and 2.86(b).

(3) The applicant must submit an affidavit or a declaration under 37 C.F.R. Section 2.20 signed by the applicant to verify (1) and (2) above. 37 C.F.R. Sections 2.59(a) and 2.71(d)(1).

(4) The applicant must list the goods by international class with the classes listed in ascending numerical order. TMEP section 1113.01.

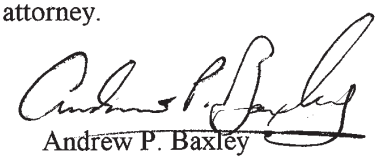
(5) The applicant must submit a filing fee for each international class of goods not covered by the fee already paid. The filing fee is $245.00 per class. 37 C.F.R. Sections 2.6(a)(1) and 2.86(b); TMEP sections 810.01 and 1113.01.

2. The applicant has not stated the date of first use of the mark in commerce in the body of the application. Therefore, the applicant must provide a statement specifying the date of first use of the mark in commerce, indicating the type of commerce, for example, interstate commerce or

commerce between the United States and a foreign country. Trademark Act Section 1(a)(1)(A), 15 U.S.C. Section 1051(a)(1)(A); 37 C.F.R. Section 2.33(a)(1)(vii); TMEP section 904.02. The applicant must verify this statement with an affidavit or a declaration under 37 C.F.R. Section 2.20. 37 C.F.R. Section 2.71(d)(1).

3. If the substitute specimens show that the applicant places the mark on the goods in a different manner than that stated in the method-of-use clause, the applicant must also amend the method-of-use clause to indicate the type of use shown on the substitute specimens. Trademark Act Section 1(a)(1)(A), 15 U.S.C. Section 1051(a)(1)(A); 37 C.F.R. Section 2.33(a)(1)(x); TMEP section 905.09. For example, if the applicant submits photographs of the marks on packaging, the applicant must amend the method-of-use clause to state that "the mark is used on packaging."

If the applicant is not submitting a fee with the response, the applicant should include the following in the mailing address to ensure proper handling: 1) the words "Box Responses" and 2) the law office number of the assigned examining attorney.



Andrew P. Baxley
Trademark Examining Attorney
Law Office 104, (703) 308-9104 x 162

MAIL-IT REQUESTED: MARCH 12, 1998 10083K

CLIENT: MCF
LIBRARY: PATENT
FILE: ALL

YOUR SEARCH REQUEST AT THE TIME THIS MAIL-IT WAS REQUESTED:
RADIUS TRACK W/10 FRAM! OR MEMBER OR WALL OR CEILING

NUMBER OF PATENTS FOUND WITH YOUR REQUEST THROUGH:
LEVEL 1... 13

LEVEL 1 PRINTED

THE SELECTED PATENT NUMBERS:
1,8,13

DISPLAY FORMAT: 50 VAR KWIC

MULTIPLE DOCUMENTS ON A PAGE

SEND TO: BAXLEY, ANDREW
U.S. DEPARTMENT OF COMMERCE
PTO - TRADEMARK
2900 CRYSTAL DRIVE
7TH FLOOR, LAW OFFICE 11
ARLINGTON VIRGINIA 22202-3600

**********02755**********

LEVEL 1 - 1 OF 13 PATENTS

5,655,345

<=2> GET 1st DRAWING SHEET OF 3

Aug. 12, 1997

Curved wall glass block assembly

DETDESC:

... As can best be seen by reference to FIG. 6, each of the tier base support units (10) comprises a plurality of generally rigid tie members (20) connected to one or more generally flexible track members (40) (41); wherein, in the preferred embodiment of the invention the tie members (20) are connected to both of the track members (40) (41); and, in an alternate version of the invention the tie **members** (20) are only connected to the inside **radius track member** (40).

As shown in FIGS. 4 thru 7, each of the tie members (20) are identical and comprise a generally flat rectangular panel element (21) provided with a plurality of intermediate ribs (22) disposed on the top and bottom surfaces of the panel element (21) and a pair of enlarged gripping heads (23) disposed on the opposite ends of the panel element (21); wherein, the gripping heads (23) are provided with ...

LEVEL 1 - 8 OF 13 PATENTS

4,095,641

<=2> GET 1st DRAWING SHEET OF 3

Jun. 20, 1978

Attachment for an overhead door

DETDESC:

... 140 to receive pivot pin 136 that extends through the pair of aligned holes 144 and the pivot point 134.

The device illustrated in FIGS. 5 to 10 is desirably pressed from sheet metal and is simple and economical to produce. It is installed as follows:

Tracks 112 are installed in conventional manner after first being cut to the proper length. It must, of course, be ensured that the cable drums 120 clear the **ceiling** but any **radius track** will work with the fitting of the present invention. The door is installed in normal fashion except for the attachment of the fitting 102 according to the present invention. The top section 104 of the door is held against the header or upper edge 182 of the door opening-see particularly FIGS. 7 to 10. The fitting 102 is then positioned at the upper

corner of the upper section 104 with the roller in the track. The fixture 102 is then moved down- ...

LEVEL 1 - 13 OF 13 PATENTS

3,552,337

Jan. 5, 1971

NEEDLE PLATE DEVICE FOR A ZIGZAG SEWING MACHINE

DETDESC:

... pin 19 is shifted to the pivot element 12 from the position at which it is located as in FIG. 2 by rotating the cam 25 and a cam 42 which are fixedly mounted on the shaft 26 and fixedly connected by means of a screw 95 so that the two cams 25 and 42 may be rotated together by operating knob 27 which is fixed on the forward end of the shaft 26 protruded out of the machine **frame** 1. The end part 24 of the plate **member** 23 engages the smaller **radius track** portion of the cam 25 while the projecting part 45 of an adjusting plate 100 engages the largest radius track portion of the cam 42. The adjusting plate 100 is adjustably fixed on a forked lever 44 by means of a stepped screw 83 and a screw 83' so that the position of the projecting part 45 of the adjusting plate 100 may be properly adjusted with respect to the cam 42. The forked ...

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*       3 PAGES                      54 LINES              JOB  87640   10083K      *
*  11:13 A.M. STARTED     11:13 A.M. ENDED                    03/12/98              *
****-------------------------------------------------------------------------****
****-------------------------------------------------------------------------****
*                          EEEEE      N   N      DDDD                            *
*                          E          N   N      D   D                           *
*                          E          NN  N      D   D                           *
*                          EEE        N N N      D   D                           *
*                          E          N  NN      D   D                           *
*                          E          N   N      D   D                           *
*                          EEEEE      N   N      DDDD                            *

****-------------------------------------------------------------------------****

****-------------------------------------------------------------------------****
```

SEND TO: BAXLEY, ANDREW
U.S. DEPARTMENT OF COMMERCE
PTO - TRADEMARK
2900 CRYSTAL DRIVE
7TH FLOOR, LAW OFFICE 11
ARLINGTON, VIRGINIA 22202-3600

EXHIBIT B

Attorney's File No. M39.501

2

TRADEMARK LAW OFFICE 104
Serial Number: 75/315627
Mark: RADIUS TRACK
Please Place on Upper Right Corner
**of Response to Office Action ONLY **

Assistant Commissioner for Trademarks
2900 Crystal Drive
Box Responses - No Fee
Arlington, Virginia 22202-3513

AMENDMENT A

Sir:

This is responsive to Examiner's First Action.

Applicant submits herewith an order form and brochure in which the RADIUS TRACK trademark is used to identify the product exclusive of the corporate designation. It is believed that this is an appropriate trademark usage and three specimens showing this usage are enclosed herewith. A declaration is provided to substantiate that these specimens were used at least as early as the filing date of the application.

Please amend the identification of the goods in accordance with the Examiner's suggestion as follows:

Add the following to the original description "made of metal" under the goods designation of the declaration.

Applicant further submits a statement that the mark was first used in commerce on the date of first use originally set forth in the declaration as filed.

Please amend the date of first use anywhere declaration as "The same as the date set forth above." and amend the mode of use to add the following to the original statement: "and to order and quotation forms."

It is submitted that the application is now in condition for allowance and the same is most respectfully requested.

Respectfully submitted,

Dated: September 10, 1998

JOHN W. ADAMS
Attorney for Applicant
Reg. No. 16,814
401 Second Avenue South
Suite 418
Minneapolis, Minnesota 55401
(612) 339-4861

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Box Responses - No Fee, Arlington Virginia 22202-3513 on September 10, 1998.

By: John W. Adams
John W. Adams

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Attorney's File No. M39.501

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. of	:	Radius Track Corporation	Action No. 01
Serial No.	:	75/315,627	Mailing Date: 03/13/98
Filed	:	June 11, 1997	
Mark	:	RADIUS TRACK	
TRADEMARK LAW OFFICE 104			

Assistant Commissioner for Trademarks
2900 Crystal Drive
Box Responses - No Fee
Arlington, Virginia 22202-3513

SUPPLEMENTAL DECLARATION OF USE

Applicant in the above identified application hereby states and declares that the mark was used on the order forms and requests for quotations as shown on the accompanying specimens thereof. The mark was also used on the dates set forth in the original application statement.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the

applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

RADIUS TRACK CORPORATION

Dated: September 10, 1998

By: _____
Charles W. Mears
Its President

Phone: (612) 861-4801

EXHIBIT C

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/315627 **APPLICANT** Radius Track Corporation **MARK** RADIUS TRACK **ADDRESS** JOHN W ADAMS 401 SECOND AVE S STE 418 MINNEAPOLIS MN 55401-2304	PAPER NO. 3 ADDRESS: **Assistant Commissioner for Trademarks** **2900 Crystal Drive** **Arlington, VA 22202-3513** If no fees are enclosed, the address should include the words "Box Responses - No Fee."
ACTION NO. 02 **MAILING DATE** 10/19/98 **REF. NO.**	Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.
FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE	

EXAMINER'S AMENDMENT

EXAMINING ATTORNEY		PERSON CALLED/INTERVIEWED	TELEPHONE NUMBER	
Andrew P. Baxley		John Adams		
X	TELEPHONE CALL	INTERVIEW DATE	X	ATTORNEY
	PERSONAL INTERVIEW	October 16, 1998		APPLICANT

CALL RECORD/NOTES

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

RE: Serial Number 75/315627

In accordance with the authorization granted by the above Applicant or attorney, the application has been AMENDED as indicated below. No response is necessary unless there is an objection to the amendment.

The application is amended to the Supplemental Register.

Andrew P. Baxley
Trademark Examining Attorney
Law Office 104, (703) 308-9104 x 162